

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ENCOMPASS INSURANCE COMPANY OF
MASSACHUSETTS,

Plaintiff,

vs.

JOSEPH D. GIAMPA, FREDERICK T.
GIAMPA, ADVANCED SPINE CENTERS,
INC., d/b/a FIRST SPINE REHAB, FUTURE
MANAGEMENT CORPORATION, FUTURE
MANAGEMENT BUSINESS TRUST,
EDWARD KENNEDY, BRIAN J.
CULLINEY, D.C. and JENNIFER
McCONNELL, D.C.

Defendants.

Civil Action No. 1:05-cv-11693-RCL

**DISCOVERY REPORT REGARDING NOVEMBER 1, 2007 ORDER COMPELLING
PRODUCTION OF DOCUMENTS**

NOW COMES the plaintiff, Encompass Insurance Company of Massachusetts (hereinafter "Encompass"), pursuant to this Court's Order dated November 1, 2007, and hereby submits the within report detailing the status of the Motions to Compel Production of Documents (Docket Nos. 169-171) and the Orders issued subsequent to the filing of these Motions.

On November 1, 2007, this Court held a Show Cause hearing regarding Motions to Compel Production of Documents filed against Kennedy Professional Supply Company, First Health Products and Advanced Health Products (hereinafter "Kennedy Supply entities"). The Kennedy Supply entities were ordered to appear and show cause why they should not be held in contempt for failing to produce the documents and information requested by Encompass. As a result of this hearing, the Court ordered that the Kennedy Supply entities produce the

documents and information requested by Encompass within two (2) weeks of the Court's Order.¹

On November 13, 2007, counsel for Encompass issued correspondence to the Kennedy Supply entities' counsel requesting production of the documents and information sought by Encompass' previously issued subpoenas. See Ex. A. Counsel for Encompass received no response to the November 13, 2007 correspondence.

Thereafter, on November 19, 2007, counsel for Encompass issued a second correspondence to the Kennedy Supply entities' counsel requesting status on the production of documents, including inquiring whether counsel needed additional time to produce the documents. As of 5:00 p.m. on November 19, 2007, counsel for Encompass received no response to the November 19, 2007 correspondence.

To date, Encompass has not received any of the requested documents and information regarding the Kennedy Supply entities' relationships with the defendants in this matter: Future Management Corporation; Advanced Spine Centers d/b/a First Spine Rehab; Joseph Giampa; Frederick Giampa; or Edward Kennedy. Based on the Kennedy Supply entities' (1) non-compliance with the duly issued subpoenas, (2) failure to object to the subpoenas (or tender a meaningful opposition to Encompass' Motions to Compel), and (3) failure to adhere to the terms of this Court's November 1, 2007 Order, Encompass requests all relief that this Court deems appropriate, including a further Order compelling the Kennedy Supply entities' production of documents.

¹ Where Encompass' subpoenas were served on the Keeper of Records of each of the Kennedy Supply entities, Encompass waived the requirement of appearance at deposition in the event the documents were produced in advance of the deadlines.

Respectfully submitted,
Encompass Insurance Company,
By its attorneys,

/s/ David O. Brink.

David O. Brink, BBO#
Richard D. King, Jr., BBO#638142
SMITH & BRINK, P.C.
350 Granite Street, Suite 2303
Braintree, Massachusetts 02184
(617) 770-2214

Dated: November 19, 2007

Certificate of Service

I, David O. Brink., hereby certify that on this 19th day of November, 2007, this document was filed through the CM/ECF and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

____/s/ *David O. Brink.*____



SMITH & BRINK, P.C.

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
WWW.SMITHBRINK.COM

ATTORNEY MICHAEL W. WHITCHER
mwhitcher@smithbrink.com

Please Reply to Braintree Office

November 13, 2007

VIA FACSIMILE (781) 233-9146

Robert M. Linnehan Jr.
Law Office Of Robert M Linnehan Jr
54 Exeter Road
Hampton Falls NH 03844

Re: Encompass Insurance Company of Massachusetts v. Joseph D. Giampa
et.al.
U.S.D.C. for the District of Massachusetts, C.A. No. 05-11963 RCL
S&B File No.: 1075-0521

Dear Attorney Linnehan:

Please accept this correspondence in connection with the above-referenced matter. As you are aware, I represent Encompass Insurance Company in the above-referenced litigation. Pursuant to Magistrate Judge Dien's Order dated November 1, 2007, your clients, Kennedy Professional Supply, First Health Products and Advanced Health Products, are ordered to produce specifically requested documents by November 19, 2007.

To date, this office has not received any of the documents ordered to be produced by your clients pursuant to the Court's November 1, 2007 Order. Additionally, this office has not been contacted either by you or your clients regarding the production of these documents.

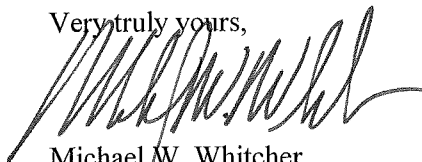
As argued in its Motions to Compel Production of Documents, Encompass is seeking certain business documents regarding your clients' relationship(s) with Future Management Corporation and/or Advanced Spine Centers, Inc. d/b/a First Spine Rehab. For your convenience, I have attached copies of the various subpoenas' Schedule As, which were issued to your clients between February 2007 and April 2007.

Upon receipt of this correspondence, kindly contact myself or Attorney Richard D. King, Jr. so that we may discuss the production of these documents in advance of Judge Dein's November 19, 2007 deadline. In the event that the requested documents are not received by the Court's November 19, 2007 deadline, Encompass will be forced to seek all appropriate redress from the Court.

<u>Danvers</u> 199 Rosewood Drive Suite 365 Danvers, MA 01923 (978) 646-9114 (978) 646-9264 fax	<u>Philadelphia</u> 1650 Market Street 36 th Floor Philadelphia, PA 19103 (267) 207-2780 (267) 319-7901 fax	<u>Providence</u> One State Street Suite 400 Providence, RI 02908 (401) 351-9970 (401) 274-6218 fax	<u>New York</u> 757 Third Avenue 23 rd Floor New York City, NY (212) 421-2769 (212) 319-3673 fax	<u>Braintree</u> 350 Granite Street Suite 2303 Braintree, MA 02184 (617) 770-2214 (617) 774-1714 fax	<u>Springfield</u> 191 Chestnut Street Suite 3D Springfield, MA 01103 (413) 746-8122 (413) 781-6290 fax
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Thank you for your continued professional courtesy regarding this matter. Should you have any questions or concerns, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Whitcher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael W. Whitcher
Richard D. King, Jr.

MMW/cfc
Enclosures

TRANSMISSION VERIFICATION REPORT

TIME : 11/13/2007 14:31
NAME : SMITHBRINK
FAX : 6176576070
TEL : 6177702214
SER.# : BROE5J268977

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MODE	STANDARD
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ATTORNEY MICHAEL W. WHITCHER
mwhitcher@smithbrink.com

Please Reply to Braintree Office

Fax Cover Sheet

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Thank you.

DATE: NOVEMBER 13, 2007

TO: ATTORNEY ROBERT M. LINNEHAN, JR. **FAX:** (781) 233-9146

FROM: MICHAEL W. WHITCHER **FAX:** (617) 657-6070
PHONE: (617) 770-1174

Re: Encompass Insurance Company of Massachusetts v. Joseph D. Giampa et.al.
U.S.D.C. for the District of Massachusetts, C.A. No. 05-11963 RCL
S&B File No.: 1075-0521



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ATTORNEY MICHAEL W. WHITCHER
mwhitcher@smithbrink.com

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Robert M. Linnehan Jr.
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U.S.D.C. for the District of Massachusetts, C.A. No. 05-11963 RCL
S&B File No.: 1075-0521

IMMEDIATE ATTENTION REQUESTED

Dear Attorney Linnehan:

Please accept this correspondence as a follow-up to my November 13, 2007 letter.

As you are aware, Judge Dein has ordered that a joint status report be filed by November 19, 2007 regarding the production of documents by your clients, Kennedy Professional Supply, First Health Products and Advanced Health Products.

At your earliest convenience, please let this office know whether: (1) you will produce the requested documents; (2) you will not produce the requested documents; or (3) you require additional time to produce these documents.

This office is currently preparing a report for Judge Dein on this issue. This report will be filed with the Court at the close of business today. Please advise immediately if you have any questions or concerns.

Thank you for your continued professional courtesy in this matter.

Very truly yours,

Michael W. Whitcher
Richard D. King, Jr.

MMW/cfc

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Thank you.

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